

BEFORE THE
PHYSICIAN ASSISTANT BOARD
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)
)
Fernando Ulloa Mata, P.A.)
)
)
Physician Assistant)
License No. PA 12281,)
)
)

Respondent.)

Case No. 950-2016-001145

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Physician Assistant Board of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 30, 2019.

DATED: August 1, 2019.

PHYSICIAN ASSISTANT BOARD



Jed Grant, P.A.-C, President

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
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7 *Attorneys for Complainant*

8
9 **BEFORE THE**
PHYSICIAN ASSISTANT BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. 950-2016-001145

14 FERNANDO ULLOA MATA, P.A.
13102 Induran Drive
15 Bakersfield, California 93314

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Physician Assistant License No. PA 12281,
17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Maureen L. Forsyth ("Complainant") is the Executive Officer of the Physician
23 Assistant Board (Board). She brought this action solely in her official capacity and is represented
24 in this matter by Xavier Becerra, Attorney General of the State of California, by Rebecca L.
25 Smith, Deputy Attorney General.

26 2. Respondent Fernando Ulloa Mata, P.A. ("Respondent") is represented in this
27 proceeding by attorney Stewart Hsieh, whose address is 2425 Mission Street, Suite 3
28 San Marino, California 91108.

3. On or about March 6, 1989, the Board issued Physician Assistant License No. PA 12281 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 950-2016-001145, and will expire on February 28, 2021, unless renewed.

JURISDICTION

4. Accusation No. 950-2016-001145 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 20, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 950-2016-001145 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 950-2016-001145. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 950-2016-001145, if proven at a hearing, constitute cause for imposing discipline upon his Physician Assistant License.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 950-2016-001145 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

12. Respondent agrees that his Physician Assistant License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

13. This stipulation shall be subject to approval by the Physician Assistant Board. Respondent understands and agrees that counsel for Complainant and the staff of the Physician Assistant Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

14. The parties understand and agree that Portable Document Format (“PDF”) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician Assistant License No. PA 12281 issued to Respondent Fernando Ulloa Mata, P.A. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **CONTROLLED DRUGS - DRUG ORDER AUTHORITY – TOTAL RESTRICTION.** Respondent shall not administer, issue a drug order, or hand to a patient or possess any controlled substances as defined by the California Uniform Controlled Substances Act.

Respondent is prohibited from practicing as a physician assistant until Respondent provides documentary proof to the Board or its designee that Respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation. Respondent shall surrender all controlled substance order forms to the supervising physician. Thereafter, Respondent shall not reapply for a new DEA permit without the prior written consent of the Board or its designee.

2. **MEDICAL RECORD KEEPING COURSE – Condition Satisfied.** Within sixty (60) calendar days of the effective date of this decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. The course shall be Category I certified, limited to classroom, conference, or seminar settings. Respondent shall successfully complete the course within the first six (6) months of probation.

Respondent shall pay the cost of the course.

Respondent shall submit a certification of successful completion to the Board or its designee within 15 days after completing the course.

3. **CLINICAL TRAINING PROGRAM.** Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board or its designee for prior approval, a clinical training or educational program such as the Physician Assessment and Clinical Education Program (PACE) offered by the University of California – San Diego School of Medicine or equivalent program as approved by the Board or its designee. The exact number of hours and specific content of the program shall be determined by the Board or its designee. The program

1 shall determine whether Respondent has successfully completed and passed the program.

2 Respondent shall pay the cost of the program.

3 If the program makes recommendations for the scope and length of any additional
4 educational or clinical training, treatment for any medical or psychological condition, or anything
5 else affecting Respondent's practice as a physician assistant, Respondent shall comply with the
6 program recommendations and pay all associated costs.

7 Respondent shall successfully complete and pass the program not later than six (6) months
8 after Respondent's initial enrollment. The program determines whether or not Respondent
9 successfully completes the program.

10 If Respondent fails to either 1) complete the program within the designated time period, or
11 2) to pass the program, as determined by the program, Respondent shall cease practicing as a
12 physician assistant immediately after being notified by the Board or its designee.

13 4. PREScribing PRACTICES COURSE – Condition Satisfied. Within 60 calendar
14 days of the effective date of this decision, Respondent shall enroll in a course in prescribing
15 practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical
16 Education Program, University of California, San Diego School of Medicine (program), approved
17 in advance by the Board or its designee. Respondent shall provide the program with any
18 information and documents that the program may deem pertinent. Respondent shall participate in
19 and successfully complete the classroom component of the course not later than six (6) months
20 after Respondent's initial enrollment. Respondent shall successfully complete any other
21 component of the course within one (1) year of enrollment. The prescribing practices course shall
22 be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

23 Respondent shall pay the cost of the course. The program shall determine whether
24 Respondent successfully completes the course.

25 Respondent shall submit a certification of successful completion to the Board or its
26 designee not later than 15 calendar days after successfully completing the course, or not later than
27 15 calendar days after the effective date of the decision, whichever is later.

28 ///

1 5. MAINTENANCE OF PATIENT MEDICAL RECORDS. Respondent shall keep
2 written medical records for each patient contact (including all visits and phone calls) at the
3 worksite and shall make them available for immediate inspection by the Board or its designee on
4 the premises at all times during business hours.

5 All medical records originated by Respondent shall be reviewed, initialed, and dated daily
6 by the supervising physician.

7 This condition shall be required for the first two (2) years of probation.

8 6. ON-SITE SUPERVISION. The supervising physician shall be on site at least fifty
9 percent (50%) of the time Respondent is practicing. This condition shall be required for the first
10 two (2) years of probation.

11 7. APPROVAL OF SUPERVISING PHYSICIAN. Respondent is permitted to continue
12 practicing under the supervision of Francis Arenas, M.D. (Physician and Surgeon License
13 number A 105582) provided that Dr. Arenas maintains a current and renewed physician and
14 surgeon's license in good standing with the Medical Board of California. Within thirty (30) days
15 of the effective date of this decision, Respondent shall submit to the Board or its designee for its
16 prior approval of the practice plan detailing the nature and frequency of supervision to be
17 provided by the supervising physician. Respondent shall not practice until the practice plan is
18 approved by the Board or its designee.

19 Respondent shall have the supervising physician submit quarterly reports to the Board or its
20 designee.

21 If the supervising physician resigns or is no longer available, Respondent shall, within
22 fifteen (15) days, submit the name and license number of a new supervising physician for
23 approval. Respondent shall not practice until a new supervising physician has been approved by
24 the Board or its designee.

25 8. NOTIFICATION OF EMPLOYER AND SUPERVISING PHYSICIAN.

26 Respondent shall notify his current and any subsequent employer and supervising
27 physician(s) of the discipline and provide a copy of the Accusation, Decision, and Order to each
28 employer and supervising physician(s) during his period of probation, before accepting or

1 continuing employment. Respondent shall ensure that each employer informs the Board or its
2 designee, in writing within thirty (30) days, verifying that the employer and supervising
3 physician(s) have received a copy of the Accusation, Decision, and Order.

4 This condition shall apply to any change(s) in place of employment.

5 Respondent shall provide to the Board or its designee the names, physical addresses,
6 mailing addresses, and telephone numbers of all employers, supervising physicians, and work site
7 monitor, and shall inform the Board or its designee in writing of the facility or facilities at which
8 the person practices as a physician assistant.

9 Respondent shall give specific, written consent to the Board or its designee to allow the
10 Board or its designee to communicate with the employer, supervising physician, or work site
11 monitor regarding the licensee's work status, performance, and monitoring.

12 9. OBEY ALL LAWS. Respondent shall obey all federal, state, and local laws, and all
13 rules governing the practice of medicine as a physician assistant in California, and remain in full
14 compliance with any court ordered criminal probation, payments, and other orders.

15 10. QUARTERLY REPORTS. Respondent shall submit quarterly declarations under
16 penalty of perjury on forms provided by the Board or its designee, stating whether there has been
17 compliance with all the conditions of probation.

18 11. OTHER PROBATION REQUIREMENTS. Respondent shall comply with the
19 Board's probation unit. Respondent shall, at all times, keep the Board and probation unit
20 informed of Respondent's business and residence addresses. Changes of such addresses shall be
21 immediately communicated in writing to the Board and probation unit. Under no circumstances
22 shall a post office box serve as an address of record, except as allowed by California Code of
23 Regulations 1399.523.

24 Respondent shall appear in person for an initial probation interview with Board or its
25 designee within ninety (90) days of the decision. Respondent shall attend the initial interview at a
26 time and place determined by the Board or its designee.

27 Respondent shall, at all times, maintain a current and renewed physician assistant license.

28 Respondent shall also immediately inform the probation unit, in writing, of any travel to

any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

12. INTERVIEW WITH MEDICAL CONSULTANT. Respondent shall appear in person for interviews with the Board's medical or expert physician assistant consultant upon request at various intervals and with reasonable notice.

13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days. Non-practice is defined as any period of time exceeding thirty (30) calendar days in which Respondent is not practicing as a physician assistant.

Respondent shall not return to practice until the supervising physician is approved by the Board or its designee.

If, during probation, Respondent moves out of the jurisdiction of California to reside or practice elsewhere, including federal facilities, Respondent is required to immediately notify the Board in writing of the date of departure and the date of return, if any.

Practicing as a physician assistant in another state of the United States or federal jurisdiction while on active probation with the physician assistant licensing authority of that state or jurisdiction shall not be considered non-practice.

All time spent in a clinical training program that has been approved by the Board or its designee, shall not be considered non-practice. Non-practice due to a Board ordered suspension or in compliance with any other condition or probation, shall not be considered a period of non-practice.

Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term.

Periods of non-practice do not relieve Respondent of the responsibility to comply with the terms and conditions of probation.

It shall be considered a violation of probation if for a total of two years, Respondent fails to practice as a physician assistant. Respondent shall not be considered in violation for non-practice as long as Respondent is residing and practicing as a physician assistant in another state of the

1 United States and is on active probation with the physician assistant licensing authority of that
2 state, in which case the two-year period shall begin on the date probation is completed or
3 terminated in that state.

4 14. UNANNOUNCED CLINICAL SITE VISIT. The Board or its designee may make
5 unannounced clinical site visits at any time to ensure that Respondent is complying with all terms
6 and conditions of probation.

7 15. CONDITION FULFILLMENT. A course, evaluation, or treatment completed after
8 the acts that gave rise to the charges in the accusation, but prior to the effective date of the
9 Decision may, in the sole discretion of the Board or its designee, be accepted towards the
10 fulfillment of the condition.

11 16. COMPLETION OF PROBATION Respondent shall comply with all financial
12 obligations (e.g., cost recovery, probation costs) no later than sixty (60) calendar days prior to the
13 completion of probation. Upon successful completion of probation, Respondent's license will be
14 fully restored.

15 17. VIOLATION OF PROBATION. If Respondent violates probation in any respect, the
16 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
17 carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is
18 filed against Respondent during probation, the Board shall have continuing jurisdiction until the
19 matter is final, and the period of probation shall be extended until the matter is final.

20 18. COST RECOVERY. Respondent is hereby ordered to reimburse the Physician
21 Assistant Board the amount of Nine Thousand Sixty-Four Dollars and Fifty Cents (\$9,064.50)
22 within ninety (90) days from the effective date of this decision for its investigative costs. Failure
23 to reimburse the Board's costs for its investigation shall constitute a violation of the probation
24 order, unless the Board agrees in writing to payment by an installment plan because of financial
25 hardship. The filing of bankruptcy by Respondent shall not relieve Respondent of his
26 responsibility to reimburse the Board for its investigative costs.

27 19. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
28 with probation monitoring each and every year of probation, as designated by the Board, which

1 may be adjusted on an annual basis. The costs shall be made payable to the Physician Assistant
2 Board and delivered to the Board no later than January 31 of each calendar year.

3 20. VOLUNTARY LICENSE SURRENDER. Following the effective date of this
4 probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise
5 unable to satisfy the terms and conditions of probation, Respondent may request, in writing, the
6 voluntarily surrender of Respondent's license to the Board. Respondent's written request to
7 surrender his license shall include the following: his name, license number, case number, address
8 of record, and an explanation of the reason(s) why Respondent seeks to surrender his license.
9 The Board reserves the right to evaluate Respondent's request and to exercise its discretion
10 whether to grant the request, or to take any other action deemed appropriate and reasonable under
11 the circumstances. Respondent shall not be relieved of the requirements of his probation unless
12 the Board or its designee notifies Respondent in writing that Respondent's request to surrender
13 his license has been accepted. Upon formal acceptance of the surrender, Respondent shall, within
14 15 days, deliver Respondent's wallet and wall certificate to the Board or its designee and shall no
15 longer practice as a physician assistant. Respondent will no longer be subject to the terms and
16 conditions of probation and the surrender of Respondent's license shall be deemed disciplinary
17 action. If Respondent re-applies for a physician assistant license, the application shall be treated
18 as a petition for reinstatement of a revoked license.

19

20 ACCEPTANCE

21 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
22 discussed it with my attorney, Stewart Hsieh. I understand the stipulation and the effect it will
23 have on my Physician Assistant License. I enter into this Stipulated Settlement and Disciplinary
24 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
25 of the Physician Assistant Board.

26

27 DATED: 6/25/19

28

Fernando Mata PA
FERNANDO ULLOA MATA, P.A.
Respondent

1 I have read and fully discussed with Respondent Fernando Ulloa Mata, P.A. the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED:

June 25, 2019

Stewart Hsieh
STEWART HSIEH
Attorney for Respondent

6
7
8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Physician Assistant Board.

11 Dated:

June 25, 2019

12 Respectfully submitted,

13 XAVIER BECERRA
14 Attorney General of California
15 JUDITH T. ALVARADO
16 Supervising Deputy Attorney General

17 Rebecca L. Smith
18 REBECCA L. SMITH
19 Deputy Attorney General
20 Attorneys for Complainant

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Exhibit A

Accusation No. 950-2016-001145

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
4 State Bar No. 179733
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7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Feb. 22 20 19
BY SUZANNE G. ANALYST

8
9 **BEFORE THE**
10 **PHYSICIAN ASSISTANT BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 950-2016-001145

14 Fernando Ulloa Mata, P.A.
15 13102 Induran Drive
Bakersfield, CA 93314

ACCUSATION

16 Physician Assistant License
17 No. PA 12281,

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Maureen L. Forsyth ("Complainant") brings this Accusation solely in her official
23 capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer
24 Affairs ("Board").

25 2. On or about March 6, 1989, the Physician Assistant Board issued Physician Assistant
26 License Number PA 12281 to Fernando Ulloa Mata, P.A. ("Respondent"). That license was in
27 full force and effect at all times relevant to the charges brought herein and will expire on February
28 28, 2021, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following provisions of the California Business and Professions Code ("Code") unless otherwise indicated.

4. Section 3527 of the Code states:

"(a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

"...

"(f) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

"(g) The expiration, cancellation, forfeiture, or suspension of a physician assistant license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

5. California Code of Regulations, title 16, section 1399.521 states:

"In addition to the grounds set forth in section 3527, subdivision (a), of the Code, the board may deny, issue subject to terms and conditions, suspend, revoke or place on probation a physician assistant for the following causes: (a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon..."

6. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default

///

1 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
2 action with the board, may, in accordance with the provisions of this chapter:

3 “(1) Have his or her license revoked upon order of the board.

4 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
5 order of the board.

6 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
7 order of the board.

8 “(4) Be publicly reprimanded by the board. The public reprimand may include a
9 requirement that the licensee complete relevant educational courses approved by the board.

10 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
11 the board or an administrative law judge may deem proper.

12 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
13 review or advisory conferences, professional competency examinations, continuing education
14 activities, and cost reimbursement associated therewith that are agreed to with the board and
15 successfully completed by the licensee, or other matters made confidential or privileged by
16 existing law, is deemed public, and shall be made available to the public by the board pursuant to
17 Section 803.1.”

18 7. Section 2234 of the Code, states:

19 “The board shall take action against any licensee who is charged with unprofessional
20 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
21 limited to, the following:

22 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
23 violation of, or conspiring to violate any provision of this chapter.

24 “(b) Gross negligence.

25 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
26 omissions. An initial negligent act or omission followed by a separate and distinct departure from
27 the applicable standard of care shall constitute repeated negligent acts.

28 ///

1 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate for
2 that negligent diagnosis of the patient shall constitute a single negligent act.

3 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
4 constitutes the negligent act described in paragraph (1), including, but not limited to, a
5 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the
6 applicable standard of care, each departure constitutes a separate and distinct breach of the
7 standard of care.

8 “(d) Incompetence.

9 “...”

10 8. Section 2242 of the Code states:

11 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
12 without an appropriate prior examination and a medical indication, constitutes unprofessional
13 conduct.

14 “(b) No licensee shall be found to have committed unprofessional conduct within the
15 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
16 the following applies:

17 “(1) The licensee was a designated physician and surgeon or podiatrist serving in the
18 absence of the patient’s physician and surgeon or podiatrist, as the case may be, and if the drugs
19 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return
20 of his or her practitioner, but in any case no longer than 72 hours.

21 “(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed
22 vocational nurse in an inpatient facility, and if both of the following conditions exist:

23 “(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
24 who had reviewed the patient’s records.

25 “(B) The practitioner was designated as the practitioner to serve in the absence of the
26 patient’s physician and surgeon or podiatrist, as the case may be.

27 “(3) The licensee was a designated practitioner serving in the absence of the patient’s
28 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized

1 the patient's records and ordered the renewal of a medically indicated prescription for an amount
2 not exceeding the original prescription in strength or amount or for more than one refill.

3 "(4) The licensee was acting in accordance with Section 120582 of the Health and Safety
4 Code."

5 9. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain
6 adequate and accurate records relating to the provision of services to their patients constitutes
7 unprofessional conduct."

8 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

9 10. Code section 4021 states:

10 "'Controlled substance' means any substance listed in chapter 2 (commencing with Section
11 11053) of Division 10 of the Health and Safety Code."

12 11. Code section 4022 provides:

13 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in
14 humans or animals, and includes the following:

15 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without
16 prescription,' 'Rx only' or words of similar import.

17 "(b) Any device that bears the statement: 'Caution: federal law restricts this device to sale
18 by or on the order of a _____,' 'Rx only,' or words of similar import.

19 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
20 prescription or furnished pursuant to Section 4006."

21 COST RECOVERY

22 12. Section 125.3 of the Code states:

23 "(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
24 proceeding before any board within the department or before the Osteopathic Medical Board,
25 upon request of the entity bringing the proceedings, the administrative law judge may direct a
26 licensee found to have committed a violation or violations of the licensing act to pay a sum not
27 to exceed the reasonable costs of the investigation and enforcement of the case.

28 ///

1 “(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order
2 may be made against the licensed corporate entity or licensed partnership.

3 “(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs
4 are not available, signed by the entity bringing the proceeding or its designated representative
5 shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.
6 The costs shall include the amount of investigative and enforcement costs up to the date of the
7 hearing, including, but not limited to, charges imposed by the Attorney General.

8 “(d) The administrative law judge shall make a proposed finding of the amount of
9 reasonable costs of investigation and prosecution of the case when requested pursuant to
10 subdivision (a). The finding of the administrative law judge with regard to costs shall not be
11 reviewable by the board to increase the cost award. The board may reduce or eliminate the cost
12 award, or remand to the administrative law judge if the proposed decision fails to make a finding
13 on costs requested pursuant to subdivision (a).

14 “(e) If an order for recovery of costs is made and timely payment is not made as directed in
15 the board's decision, the board may enforce the order for repayment in any appropriate court.
16 This right of enforcement shall be in addition to any other rights the board may have as to any
17 licentiate to pay costs.

18 “(f) In any action for recovery of costs, proof of the board's decision shall be conclusive
19 proof of the validity of the order of payment and the terms for payment.

20 “(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the
21 license of any licentiate who has failed to pay all of the costs ordered under this section.

22 (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or
23 reinstate for a maximum of one year the license of any licentiate who demonstrates financial
24 hardship and who enters into a formal agreement with the board to reimburse the board within
25 that one-year period for the unpaid costs.

26 “(h) All costs recovered under this section shall be considered a reimbursement for costs
27 incurred and shall be deposited in the fund of the board recovering the costs to be available upon
28 appropriation by the Legislature.

1 “(i) Nothing in this section shall preclude a board from including the recovery of the costs
2 of investigation and enforcement of a case in any stipulated settlement.

3 “(j) This section does not apply to any board if a specific statutory provision in that board's
4 licensing act provides for recovery of costs in an administrative disciplinary proceeding.

5 “(k) Notwithstanding the provisions of this section, the Medical Board of California shall
6 not request nor obtain from a physician and surgeon, investigation and prosecution costs for a
7 disciplinary proceeding against the licensee. The board shall ensure that this subdivision is
8 revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from
9 this subdivision is offset by an increase in the amount of the initial license fee and the biennial
10 renewal fee, as provided in subdivision (e) of Section 2435.”

11 **FACTUAL ALLEGATIONS**

12 **Patient 1¹**

13 13. Patient 1, a then 32-year-old male, presented to Respondent on April 10, 2013 for
14 follow up regarding lower back pain and constipation. Respondent noted that the patient had x-
15 rays of the lower back taken that same day. The patient's gait was noted to be antalgic with
16 midline tenderness. Respondent's assessment was low back pain, coccydynia² and constipation.
17 Respondent prescribed hydrocodone-acetaminophen 10-325 mg (60 tablets)³ with one refill for
18 pain and Colace 100 mg (100 tablets) for constipation. He recommended that the patient return in
19 one-week for follow up.

20 14. Patient 1 was next presented to Respondent on May 22, 2013 with complaints of
21 lower back pain. Respondent noted that the patient complained of lower back pain after falling
22 down a flight of stairs two weeks ago. The patient reported that despite being prescribed Tylenol

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25 ¹ For privacy purposes, the three patients in this Accusation are referred to as Patients 1, 2 and 3.

26 ² Coccydynia is inflammation localized to the coccyx (tailbone).

27 ³ In 2013, hydrocodone-acetaminophen was a Schedule III Controlled Substance and a dangerous
28 drug. Commencing on October 6, 2014, hydrocodone-acetaminophen became classified as a Schedule II
Controlled Substance and a dangerous drug.

1 with codeine and Soma⁴ at an urgent care following the fall, he was still having midline low back
2 pain. Respondent noted positive tenderness to the midline low back and coccyx. Respondent's
3 assessment was low back pain and coccydynia. He ordered x-rays of the sacral-coccyx area. He
4 discontinued the Tylenol with codeine and prescribed hydrocodone-acetaminophen 10-325 mg
5 (40 tablets) with one refill and Soma 250 mg (30 tablets) with one refill.

6 15. On June 24, 2013, Patient 1 presented to Respondent for a refill of hydrocodone-
7 acetaminophen. No vital signs or examination were documented. Respondent's diagnoses were
8 low back pain and coccydynia. He prescribed hydrocodone-acetaminophen 10-325 mg (40
9 tablets) and referred the patient to pain management.

10 16. Patient 1 next presented to Respondent on July 29, 2013 with complaints of back
11 pain. Respondent noted that the patient still complained of low back pain. The patient reported
12 being very tense, nervous and unable to sleep at night after being involved in a motor vehicle
13 accident two weeks prior. Respondent noted that the patient's vital signs were stable and that he
14 had positive tenderness to palpation on the low back as well as an antalgic gait. Respondent's
15 diagnoses were anxiety and unresolved lumbar and lower back pain. He ordered an MRI of the
16 lumbar spine and referred the patient to orthopedics. He prescribed Xanax 1 mg (30 tablets)⁵ and
17 Tramadol 50 mg (60 tablets).⁶ He recommended that the patient return in one-week.

18 17. Almost a year since his last office visit, on July 24, 2014, Patient 1 presented to
19 Respondent complaining of low back pain and requesting a Tramadol refill. Upon examination,
20 Respondent noted positive tenderness of the low back. The patient's gait was within normal
21 limits. Respondent's diagnosis was lower back pain. He prescribed Tramadol 50 mg (30 tablets)
22 as needed for pain. He also gave the patient the option of being prescribed Robaxin 500 mg (30
23 tablets) or Soma 350 mg (30 tablets).

24
25 ⁴ On December 12, 2011, Soma, a brand name of the generic drug carisoprodol, became classified
as a Schedule IV Controlled Substance and a dangerous drug.

26 ⁵ Xanax, a brand name of the generic drug Alprazolam, is a Schedule IV Controlled Substance and
27 a dangerous drug.

28 ⁶ Commencing on August 18, 2014, Tramadol became classified as a Schedule IV Controlled
Substance and a dangerous drug.

1 18. On August 5, 2014, Respondent prescribed hydrocodone-acetaminophen 5-325 mg
2 (30 tablets) and carisoprodol 350 mg (30 tablets). On August 11, 2014, Respondent prescribed
3 carisoprodol 350 mg (30 tablets). On August 22, 2014, Respondent prescribed Tramadol 50 mg
4 (30 tablets) with one refill and hydrocodone-acetaminophen 5-325 mg (30 tablets).

5 19. On August 26, 2014, Patient 1 and Respondent were sent a "Notice of Action –
6 Denial About Your Treatment Request" from Kern Family Health Care setting forth that
7 Respondent failed to demonstrate medical necessity for prescribing Tramadol to Patient 1 and that
8 the prescription for Tramadol 50 mg tablets would not be approved because "Tramadol is not
9 indicated to be taken with other medication on [Patient 1's] profile such as Norco,
10 Methocarbamol,⁷ and Soma."

11 20. On September 22, 2014, Respondent prescribed Tramadol 50 mg (30 tablets) and
12 carisoprodol 350 mg (30 tablets). On September 26, 2014, Respondent prescribed carisoprodol
13 350 mg (30 tablets). On October 23, 2014, Respondent prescribed Methocarbamol 500 mg (30
14 tablets) and Tramadol 50 mg (30 tablets). On October 28, 2014, Respondent prescribed Tramadol
15 50 mg (30 tablets). On December 11, 2014, Respondent prescribed Tramadol 50 mg (30 tablets)
16 with one refill. On December 17, 2014, Respondent prescribed Methocarbamol 500 mg (30
17 tablets).

18 21. On March 9, 2015, the patient presented to Respondent with complaints of right knee
19 pain. The patient reported that he fell a week ago and now has right knee pain. Respondent noted
20 that the patient also presented for an "Initial Physical Exam" however there was no
21 documentation of a physical examination. Respondent's assessment was hypertension, insomnia,
22 history of gout, obesity and right knee contusion/pain. Respondent's plan was to request x-rays
23 previously performed at Mercy Hospital and order an MRI of the right knee. Respondent
24 prescribed Motrin 600 mg and instructed the patient to return in one week.

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27 ⁷ Methocarbamol is a central nervous system depressant and muscle relaxant used to treat muscle
28 spasms, tension, and pain. Though not a narcotic, it may be mistaken for a narcotic due to side effects like
drowsiness and dizziness, which can feel like a drug high.

1 22. Respondent signed a progress note dated March 10, 2015 for Patient 1. Other than
2 prescribing hydrocodone-acetaminophen 5-325 mg (12 tablets), the remainder of the form (i.e.,
3 intake, interval history, patient concerns, physical examination and assessment) was not filled out.

4 23. Patient 1 next presented to Respondent on March 13, 2015 complaining of continued
5 right knee pain. There was no documentation of a physical examination. Respondent's
6 assessment was right knee pain/strain. Respondent recommended physical therapy and x-rays of
7 the right knee. He prescribed hydrocodone-acetaminophen 5-325 mg (10 tablets) and instructed
8 the patient to return in one week.⁸

9 24. On March 19, 2015, Respondent prescribed Methocarbamol 500 mg (30 tablets).

10 25. Patient 1 next presented to Respondent on March 21, 2015 at which time he
11 complained of right knee pain and a cough for the past 5 days. Respondent performed a physical
12 examination. His assessment was right knee pain, controlled hypertension and upper respiratory
13 infection. Respondent recommended physical therapy for the patient's right knee. Respondent
14 prescribed Phenergan DM and hydrocodone-acetaminophen 5-325 mg.

15 26. On March 27, 2015, Respondent prescribed Phenergan with codeine with 2 refills.

16 27. On April 13, 2015, Patient 1 presented to Respondent for follow up reporting that the
17 TENS unit⁹ helped decrease his right knee pain and that his cough had not improved. Respondent
18 documented the performance of a physical examination. His assessment was cough and right
19 knee pain. Respondent recommended that the patient keep his physical therapy appointment and
20 undergo an MRI of the right knee. Respondent prescribed hydrocodone-acetaminophen 5-325 mg
21 (100 tablets) and Soma 350 mg (30 tablets). The patient was instructed to return in 2 weeks.

22 28. On May 4, 2015, Patient 1 was seen by Respondent. The patient reported that his
23 right knee pain was more tolerable and improved with physical therapy and a knee brace.
24 Respondent's assessment was improved right knee strain and hypertension. He recommended

25 _____
26 ⁸ Respondent's Controlled Substance Utilization Review and Evaluation System ("CURES")
27 Report reflects that on March 14, 2015, Patient 1 filled a prescription from Respondent for 100 tablets of
28 hydrocodone-acetaminophen 5-325 mg.

28 ⁹ A TENS unit is a transcutaneous electrical nerve stimulation devise that can be used at home for
 pain management..

1 that the patient continue with physical therapy. He prescribed hydrocodone-acetaminophen 5-325
2 mg (60 tablets) with the notation "(last refill)." The patient was instructed to return in 4 weeks.

3 29. On July 6, 2015, Patient 1 was seen by Respondent. The patient requested a refill of
4 medication and complained of anxiety and nervousness over family and personal problems.
5 Respondent documented the performance of a physical examination. His assessment was
6 hypertension, right knee pain and anxiety/stress. Respondent prescribed hydrocodone-
7 acetaminophen 5-325 mg (60 tablets) and Soma 350 mg (60 tablets). The patient was instructed
8 to return in one month.

9 30. Patient 1 was next seen by Respondent on July 22, 2015 at which time he complained
10 of cough, phlegm for two days, chest pain and possible fever. Respondent documented that he
11 performed a physical examination. The patient was afebrile and had positive rhonchi/rales
12 bilaterally with no wheezing. Respondent's assessment was pneumonia, obesity and
13 hypertension. Respondent prescribed antibiotics, cough syrup, hydrocodone-acetaminophen 5-
14 325 mg (60 tablets) and Soma 350 mg (60 tablets).

15 31. On August 25, 2015, Patient 1 was seen by Respondent for complaints of continued.
16 right knee pain despite physical therapy and a soft knee brace. Respondent noted that the patient
17 had medial tenderness and limited range of motion of the right knee as well as an antalgic gait.
18 Respondent's assessment was possible meniscus injury of the right knee. He recommended an
19 MRI of the right knee and an orthopedic referral. Respondent prescribed hydrocodone-
20 acetaminophen 5-325 mg (60 tablets).

21 32. The patient next presented to Respondent on September 22, 2015 at which time he
22 requested a refill of medication. A blood pressure reading of 124/87 was noted.¹⁰ Respondent's
23 assessment was hypertension. In addition to medication to treat high blood pressure, Respondent
24 prescribed hydrocodone-acetaminophen 5-325 mg (60 tablets).

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27 ¹⁰ Normal blood pressure is less than 120 systolic and less than 80 diastolic. Elevated blood
28 pressure is 120-129 systolic and less than 80 diastolic. High blood pressure (hypertension) stage 1 is 130-
139 systolic or 80-89 diastolic. High blood pressure (hypertension) stage 2 is 140 or higher systolic or 90
or higher diastolic. Hypertensive crisis is higher than 180 systolic and/or higher than 120 diastolic.

1 33. On October 5, 2015, Patient 1 presented to Respondent following an Urgent Care
2 visit for cough, sweating and weight loss. Respondent noted that the patient's lungs had positive
3 rhonchi bilaterally with no wheezing. His assessment was cough, weight loss and pneumonia.
4 He requested the Urgent Care laboratory results and ordered a cocci and HIV screening, sputum
5 culture and chest x-ray.

6 34. On October 12, 2015, Patient 1 presented to Respondent for a refill of medication.
7 No physical examination was documented. Respondent's assessment was hypertension and he
8 prescribed blood pressure medication.

9 35. On October 20, 2015, Patient 1 presented to Respondent for follow up on laboratory
10 results and medication refill. The patient's laboratory results and blood pressure were
11 documented. Respondent's assessment was obesity, hypertension, bronchitis and right knee pain.
12 Respondent prescribed antibiotics and hydrocodone-acetaminophen 5-325 mg (60 tablets). He
13 instructed the patient to keep his previously scheduled MRI and orthopedic appointments.

14 36. On November 13, 2015, Respondent prescribed carisoprodol 350 mg (30 tablets).

15 37. On November 16, 2015, Patient 1 presented to Respondent for a refill of medication.
16 No physical examination or assessment was documented. Respondent prescribed antibiotics,
17 blood pressure medication and hydrocodone-acetaminophen 5-325 mg (60 tablets).

18 38. On December 7, 2015, Patient 1 presented to Respondent for a refill of medication.
19 No physical examination was documented. Respondent's assessment was right knee pain.
20 Respondent prescribed hydrocodone-acetaminophen 5-325 mg (60 tablets) and carisoprodol 350
21 mg (30 tablets).

22 39. On January 11, 2016, Patient 1 presented to Respondent for a refill of medication. No
23 physical examination was documented. Respondent's assessment was hypertension and right
24 knee pain. Respondent prescribed blood pressure medication and hydrocodone-acetaminophen 5-
25 325 mg (60 tablets).

26 40. On January 29, 2016, Respondent prescribed carisoprodol 350 mg (60 tablets).

27 41. On February 9, 2016, Patient 1 presented to Respondent for a refill of medications.
28 Respondent documented that he performed a physical examination. His assessment was

1 bronchospasm, anxiety, hypertension, right knee pain and obesity. He prescribed blood pressure
2 medication, Xanax 2 mg (30 tablets) and hydrocodone-acetaminophen 5-325 mg (60 tablets).

3 Respondent instructed the patient to schedule an annual physical next month.

4 42. On March 2, 2016, Respondent prescribed Alprazolam 2 mg (30 tablets).

5 43. On March 7, 2016, Patient 1 presented to Respondent for a refill of medication. No
6 physical examination was documented. Respondent's assessment was right knee pain. He
7 prescribed hydrocodone-acetaminophen 5-325 mg (60 tablets) and Soma 350 mg (60 tablets). He
8 instructed the patient to schedule an annual physical examination for the following week.

9 44. On April 5, 2016, Patient 1 presented to Respondent with complaints of right
10 shoulder pain after falling while painting his home that same morning. He also requested a
11 medication refill. Respondent noted that the patient had right shoulder tenderness, bruising of the
12 right arm/shoulder and limited range of motion of the right shoulder. Respondent's assessment
13 was right shoulder abrasion/contusion, hypertension and anxiety. He recommended an x-ray of
14 the right shoulder. He refilled the patient's blood pressure medication as well as Xanax 2 mg (30
15 tablets) and hydrocodone-acetaminophen 10-325 mg (60 tablets). He instructed the patient to
16 return in 1 week.

17 45. On April 26, 2016, Respondent prescribed carisoprodol 350 mg (60 tablets) and
18 alprazolam 2 mg (30 tablets).

19 46. On April 27, 2016, Patient 1 presented to Respondent for a refill of medication. No
20 physical examination was documented. Respondent's assessment was right knee pain and he
21 prescribed hydrocodone-acetaminophen 5-325 mg (60 tablets).

22 47. On May 12, 2016, Patient 1 presented to Respondent with complaints of continued
23 knee pain. The patient reported that the pain medication relieved the pain temporarily and that he
24 bought a TENS unit for electrical stimulation therapy. The patient requested a refill of
25 medications. Respondent documented the performance of a physical examination. His
26 assessment was obesity, hypertension, anxiety and right knee pain. Respondent recommended
27 using the TENS unit at home and an orthopedic referral. Respondent prescribed hydrocodone-

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1 acetaminophen 5-325 mg (60 tablets), Soma 350 mg (60 tablets) and alprazolam 2 mg (30
2 tablets).

3 48. On June 1, 2016, Respondent prescribed carisoprodol 350 mg (60 tablets) and
4 alprazolam 2 mg (30 tablets).

5 49. On June 9, 2016, Patient 1 presented to Respondent for an annual physical
6 examination, a fever blister on his lips and a medication refill. Respondent documented a
7 physical examination. His assessment was cold-sore on mouth, anxiety and right knee pain.
8 Respondent recommended that the patient keep his upcoming orthopedic appointment. In
9 addition to prescribing cold sore medication, Respondent prescribed Xanax 2 mg (30 tablets),
10 hydrocodone-acetaminophen 5-325 mg (60 tablets) and ibuprofen 600 mg (30 tablets). The
11 patient was instructed to return in 2 weeks.

12 50. On July 5, 2016, Patient 1 presented to Respondent requesting a refill of medication.
13 Respondent noted that a physical examination was deferred. His assessment was right knee pain.
14 Respondent prescribed hydrocodone-acetaminophen 5-325 mg (60 tablets) and carisoprodol 350
15 mg (60 tablets) and instructed the patient to return in one month.

16 51. On August 3, 2016, Patient 1 presented to Respondent requesting a refill of
17 hydrocodone-acetaminophen, soma and ibuprofen. No physical examination was documented.
18 Respondent noted that he discontinued hydrocodone-acetaminophen. He prescribed Tylenol extra
19 strength (100 tablets), Soma 350 mg (60 tablets) and Ibuprofen 600 mg (30 tablets).

20 52. On August 29, 2016, Patient 1 presented to Respondent requesting a refill of
21 medications. No physical examination was documented. Respondent's assessment was right
22 knee pain and anxiety. He prescribed Soma 350 mg (60 tablets) and Xanax 1 mg (30 tablets).

23 **Patient 2**

24 53. For the time frame of January 1, 2015 to November 1, 2017, Respondent saw Patient
25 2 on multiple occasions for a variety of health issues, including flu and cold symptoms, back pain,
26 shoulder pain, gynecology care and obesity. During that time frame, Respondent prescribed
27 multiple medications, ordered diagnostic studies and provided referrals to pain management,
28 psychiatry and gynecology.

1 54. On July 27, 2016, Patient 2, a then 44-year-old woman, presented to Respondent with
2 a complaint regarding her weight. She was 61 inches tall, weighed 184 pounds and had a body
3 mass index ("BMI") of 34.7.¹¹ Her blood pressure was noted to be 149/105. Respondent's
4 assessment was that the patient was overweight. He recommended liver function studies, which
5 were noted to have been done. He prescribed Adipex-P 37.5 mg, 30 tablets, one tablet daily, to
6 be taken orally.¹²

7 55. On August 10, 2016, Patient 2 presented to Respondent for follow up regarding her
8 weight. Respondent noted that the patient weighed 178 pounds, her blood pressure was 129/92
9 and her liver function studies were within normal limits. Respondent's assessment was
10 "overweight (improved)." He prescribed Adipex-P 37.5 mg, 30 tablets to be taken once a day,
11 orally.

12 56. Patient 2 next presented to Respondent for follow up regarding her weight on August
13 24, 2016. Respondent noted the patient's weight to be 175 pounds and that she lost 8 pounds in
14 the last month. Her blood pressure was 142/87. Respondent's assessment was overweight but
15 improved and hypertension. He recommended liver function studies, which were noted to have
16 been done. He prescribed Adipex-P 37.5 mg, 30 tablets, one tablet daily, orally and added
17 Hydrochlorothiazide 125 mg, 30 tablets, one tablet to be taken daily, orally.¹³

18 57. On November 4, 2016, Patient 2 presented to Respondent for follow up regarding her
19 weight. She weighed 161 pounds and had a body mass index of 30.4. Her blood pressure was
20 130/90. Respondent noted that the patient had lost 14 pounds in the past 2 months. Respondent's
21 assessment was that the patient was over weight. He recommended liver function studies, which
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24 ¹¹ BMI is a measure of body fat based on height and weight that applies to adult men and women.
25 BMI of 18.5 or less is underweight. BMI of 18.5-24.9 is normal weight. BMI of 25-29.9 is overweight.
26 BMI of 30 or greater is obese.

27 ¹² Adipex-P, the brand-name drug for Phentermine, is a Schedule IV Controlled Substance and a
28 dangerous drug. Adipex-P and Phentermine stimulate the central nervous system, which increases heart
rate and blood pressure and decreases appetite.

¹³ Hydrochlorothiazide (HCTZ) is a medication that reduces extra fluid in the body and is used to
treat high blood pressure.

1 were noted to have been done. He prescribed Phentermine 37.5 mg, 30 tablets, one tablet to be
2 taken daily, orally with a notation of "(last month)."

3 58. At that time of his interview with the Board on August 16, 2018, Respondent stated
4 that he was not sure if Phentermine can cause tachycardia or elevated blood pressure. He also did
5 not know that Phentermine is a controlled substance.

6 **Patient 3**

7 59. For the time frame of January 1, 2015 to November 1, 2017, Respondent saw Patient
8 3 on three occasions: February 2, 2015, August 2, 2016 and September 21, 2017.

9 60. On February 2, 2015, Patient 3, a then 29-year-old male patient with cerebral palsy,
10 was seen by Respondent for a sore throat and cough for 4 days. Respondent noted that the patient
11 was afebrile, had a hyperemic pharynx and questionable wheezing. Respondent's assessment was
12 pharyngitis. He prescribed amoxicillin, Phenergan, albuterol and a wheelchair/stroller.

13 61. Patient 3 was next seen by Respondent on August 2, 2016, at which time it was noted
14 that the patient was being seen after two 3-day hospitalizations in the past 2 weeks for fatigue,
15 weakness and poor appetite. Under the physical examination portion of Respondent's progress
16 note, he set forth that the patient was wheelchair bound, sleeping in the wheelchair, had an
17 erythematous dry mouth and was thinner than normal. Respondent's assessment was cerebral
18 palsy, constipation, seizure disorder, decreased appetite with weight loss and oral thrush.
19 Respondent prescribed Colace, Ensure, a neurology referral and nystatin oral suspension.

20 62. Patient 3 was next seen by Respondent on September 21, 2017 for follow up and a
21 replacement wheelchair. Respondent assessed the patient as being wheelchair bound and
22 incontinent with seizure disorder and cerebral palsy. Respondent's plan was that the patient
23 required a new wheelchair, incontinence wash, briefs, underpads, waterproof sheets and cream.
24 No examination was documented.

25 **STANDARD OF CARE**

26 63. The standard of care for a physician assistant prescribing controlled substances
27 requires the taking of a medical history and physical examination, including an assessment of the
28 patient's pain, physical status and function; psychological status and function; substance abuse

1 history; history of prior pain treatments and assessment of any other underlying or co-existing
2 condition. Documentation should also include the recognized medical indications for the use of
3 controlled substances.

4 64. The standard of care for a physician assistant prescribing controlled substances
5 requires an informed consent discussion with the patient, including a discussion regarding the
6 risks and benefits of the use of controlled substances as well as other available treatment
7 modalities.

8 65. The standard of care for a physician assistant prescribing controlled substances
9 requires documentation of periodic reviews of the course of pain treatment with appropriate
10 modifications in treatment based on the patient's progress or lack of progress.

11 66. The standard of care for a physician assistant prescribing controlled substances
12 requires documentation of history and physical examinations along with evaluations,
13 consultations, treatment plans, objectives, informed consent, medications prescribed and periodic
14 reviews of the patient's conditions.

15 67. The standard of care for physician assistants prescribing Phentermine for weight loss
16 requires that the practitioner be familiar with the risks of the medication as well as the potential
17 side-effects of its use.

18 68. The standard of care for physician assistants prescribing Phentermine for weight loss
19 requires that the practitioner informed the patient of the risks and benefits of the medication as
20 well as the potential side-effects of its use. In addition, Phentermine should only be prescribed as
21 part of an organized weight loss program, involving diet therapy, education and exercise.

22 69. The standard of care for physician assistants seeing patients in general requires that
23 the practitioner perform a medical history and physical examination, including an assessment of
24 the patient's symptoms. Symptoms of fatigue, weakness and poor appetite require, at a
25 minimum, neurological, respiratory, cardiac and abdominal examinations.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence in the Performance of Medical History and**
3 **Physical Examination while Prescribing Controlled Substances - Patient 1)**

4 70. Respondent is subject to disciplinary action under Code Section 2234, subdivision
5 (b), and 3527, subdivision (a), and California Code of Regulations, title 16, section 1399.521,
6 subdivision (a), in that he engaged in gross negligence by failing to properly obtain a medical
7 history and perform physical examinations while prescribing controlled substances to Patient 1.
8 Complainant refers to and, by this reference, incorporates herein, paragraphs 13 through 52 and
9 63, above, as though fully set forth herein. The circumstances are as follows:

10 71. Respondent prescribed controlled substances to Patient 1 from April 10, 2013 to
11 August 29, 2016 without documenting a history of response to the medications.

12 72. Respondent prescribed controlled substances to Patient 1 from April 10, 2013 to
13 August 29, 2016 without discussing substance abuse and documenting the patient's response to
14 questions about substance abuse.

15 73. Respondent failed to obtain a neurological evaluation related to Patient 1's back pain.

16 74. Respondent failed to determine if the multiple accidents Patient 1 reported to
17 Respondent were related to the medications being prescribed.

18 75. Respondent's acts and/or omissions as set forth in paragraphs 13 through 52, 63 and
19 70 through 74, above, whether proven individually, jointly, or in any combination thereof,
20 constitute gross negligence pursuant to section 2234, subdivision (b), and 3527, subdivision (a),
21 of the Code and California Code of Regulations, title 16, section 1399.521, subdivision (a).
22 Therefore cause for discipline exists.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Gross Negligence in the Failure to Obtain Informed Consent**
25 **while Prescribing Controlled Substances - Patient 1)**

26 76. Respondent is subject to disciplinary action under Code Section 2234, subdivision
27 (b), and 3527, subdivision (a), and California Code of Regulations, title 16, section 1399.521,
28 subdivision (a), in that he engaged in gross negligence by failing to properly inform Patient 1 of

1 the risks and benefits of the use of controlled substances as well as other possible treatment
2 modalities. Complainant refers to and, by this reference, incorporates herein, paragraphs 13
3 through 52 and 64, above, as though fully set forth herein. The circumstances are as follows:

4 77. Respondent failed to discuss and document any discussion regarding Patient 1's risk
5 for opiate dependency or addiction.

6 78. Respondent's acts and/or omissions as set forth in paragraphs 13 through 52, 64 and
7 76 through 77, above, whether proven individually, jointly, or in any combination thereof,
8 constitute gross negligence pursuant to 2234, subdivision (b), and 3527, subdivision (a), of the
9 Code and California Code of Regulations, title 16, section 1399.521, subdivision (a). Therefore
10 cause for discipline exists.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Gross Negligence in the Failure to Perform Physical Examinations - Patient 3)**

13 79. Respondent is subject to disciplinary action under Code Section 2234, subdivision
14 (b), and 3527, subdivision (a), and California Code of Regulations, title 16, section 1399.521,
15 subdivision (a), in that he engaged in gross negligence by failing to perform and document
16 physical examinations as part of his care and treatment of Patient 3 on August 2, 2016 and
17 September 21, 2017. Complainant refers to and, by this reference, incorporates herein,
18 paragraphs 59 through 62 and 69, above, as though fully set forth herein.

19 80. Respondent's acts and/or omissions as set forth in paragraphs 59 through 62, 69 and
20 79, above, whether proven individually, jointly, or in any combination thereof, constitute gross
21 negligence pursuant to 2234, subdivision (b), and 3527, subdivision (a), of the Code and
22 California Code of Regulations, title 16, section 1399.521, subdivision (a). Therefore cause for
23 discipline exists.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Repeated Negligent Acts – Patients 1, 2 and 3)**

26 81. Respondent is subject to disciplinary action under section 2234, subdivision (c), and
27 3527, subdivision (a), of the Code and California Code of Regulations, title 16, section 1399.521,
28 subdivision (a), in that he engaged in repeated acts of negligence in the care and treatment of

1 Patients 1, 2 and 3. Complainant refers to and, by this reference, incorporates herein, paragraphs
2 13 through 80, above, as though fully set forth herein.

3 82. Respondent was negligent in the care and treatment of Patient 1. The circumstances
4 are as follows:

5 a. Respondent prescribed controlled substances to Patient 1 from April 10, 2013
6 to August 29, 2016 without documenting a history of response to the medications.

7 b. Respondent prescribed controlled substances to Patient 1 from April 10, 2013
8 to August 29, 2016 without discussing substance abuse and documenting the patient's response to
9 questions about substance abuse.

10 c. Respondent failed to obtain a neurological evaluation related to Patient's back
11 pain.

12 d. Respondent failed to determine if the multiple accidents Patient 1 reported to
13 Respondent were related to the medications being prescribed.

14 e. Respondent failed to discuss and document any discussion regarding Patient 1's
15 risk for opiate dependency or addiction.

16 f. Respondent failed to consistently perform periodic reviews of Patient 1's
17 course of pain treatment with appropriate modifications in treatment based on the patient's
18 progress or lack of progress while prescribing controlled substances.

19 g. Respondent failed to perform and document the performance physical
20 examinations of Patient 1 while prescribing controlled substances.

21 83. Respondent was negligent in the care and treatment of Patient 2. The circumstances
22 are as follows:

23 a. Respondent failed to inform Patient 2 of the risks and benefits of Phentermine
24 as well as the potential side-effects of its use before prescribing it to her on July 27, 2016, August
25 10, 2016, August 24, 2016 and November 4, 2016.

26 b. Respondent failed to establish an organized weight loss program, including diet
27 therapy, education and exercise, when he prescribed Phentermine to Patient 2 on July 27, 2016,
28 August 10, 2016, August 24, 2016 and November 4, 2016.

1 84. Respondent failed to perform and document physical examinations as part of his care
2 and treatment of Patient 3 on August 2, 2016 and September 21, 2017.

3 85. Respondent's acts and/or omissions as set forth in paragraphs 13 through 84, above,
4 whether proven individually, jointly, or in any combination thereof, constitute gross negligence
5 pursuant to section 2234, subdivision (c), and 3527, subdivision (a), of the Code and California
6 Code of Regulations, title 16, section 1399.521, subdivision (a). Therefore cause for discipline
7 exists.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Furnishing Dangerous Drugs Without Examination – Patient 1)**

10 86. Respondent is subject to disciplinary action under Code section 2242, subdivision (a),
11 and 3527, subdivision (a), and California Code of Regulations, title 16, section 1399.521,
12 subdivision (a), in that he committed unprofessional conduct when he prescribed dangerous drugs
13 to Patient 1 without an appropriate prior examination or medical indication therefor.

14 Complainant refers to and, by this reference, incorporates herein, paragraphs 13 through 52, 63
15 through 66, 70 through 78, and 81 through 82, above, as though fully set forth herein.

16 87. Respondent's acts and/or omissions as set forth in paragraphs 13 through 52, 63
17 through 66, 70 through 78, and 81 through 82, above, whether proven individually, jointly, or in
18 any combination thereof, constitute unprofessional conduct pursuant to section 2242, subdivision
19 (a), and 3527, subdivision (a), of the Code and California Code of Regulations, title 16, section
20 1399.521, subdivision (a). Therefore cause for discipline exists.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 **(Incompetence – Patient 3)**

23 88. Respondent is subject to disciplinary action under Code section 2234, subdivision (d),
24 2266 and 3527, subdivision (a), of the Code, and California Code of Regulations, title 16, section
25 1399.521, subdivision (a), in that he was incompetent by prescribing Phentermine to Patient 3 for
26 weight loss without being familiar with the risks of the medications and the potential side effects
27 of its use. Complainant refers to and, by this reference, incorporates herein, paragraphs 59
28 through 62, 67 through 68, 81 and 83, above, as though fully set forth herein.

1 89. Respondent's acts and/or omissions as set forth in paragraphs 59 through 62, 67
2 through 68, 81 and 83, above, whether proven individually, jointly, or in any combination thereof,
3 constitute incompetence pursuant to section 2234, subdivision (d), and 3527, subdivision (a), of
4 the Code, and California Code of Regulations, title 16, section 1399.521, subdivision (a).
5 Therefore cause for discipline exists.

6 **SEVENTH CAUSE FOR DISCIPLINE**

7 **(Failure to Maintain Accurate and Adequate Medical**

8 **Records – Patients 1, 2 and 3)**

9 90. Respondent is subject to disciplinary action under section 2266 and 3527, subdivision
10 (a), of the Code and California Code of Regulations, title 16, section 1399.521, subdivision (a),
11 for failing to maintain adequate and accurate records relating to his care and treatment of Patients
12 1, 2 and 3. Complainant refers to and, by this reference, incorporates herein, paragraphs 13
13 through 89, above, as though fully set forth herein.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Physician Assistant Board issue a decision:

17 1. Revoking or suspending Physician Assistant License Number PA 12281, issued to
18 Fernando Ulloa Mata, P.A.;

19 2. Ordering Fernando Ulloa Mata, P.A. to pay the Physician Assistant Board the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business &
21 Professions Code section 125.3;

22 3. If placed on probation, ordering Fernando Ulloa Mata, P.A. to pay the Board the costs
23 of probation monitoring pursuant to Business and Professions Code section 3527, subdivision (f);
24 and

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4. Taking such other and further action as deemed necessary and proper.

DATED: February 20, 2019



MAUREEN L. FORSYTH
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
Complainant

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